

**R.D. # 002-08
Moonachie, NJ**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**IRON MOUNTAIN INFORMATION
MANAGEMENT, INC.¹**

Employer

and

CASE 22-RC-12930

**LOCAL UNION NO. 560,
INTERNATIONAL
BROTHERHOOD OF
TEAMSTERS**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

The Petitioner seeks to represent a unit of about 36 transportation service specialists, herein TSSs or couriers,² employed by the Employer at its Moonachie, New Jersey facility, excluding all office clerical employees, warehouse employees and managerial staff.

The Employer contends that only a wall-to-wall unit at its Moonachie facility is appropriate. According to the Employer, employees in the additional categories of transportation service coordinators, operations service specialists, operations service coordinators, customer service representatives and administrators share a community of

¹ The Employer's name appears as amended at the Hearing.

² Referred to in the Petition as drivers.

interests with the petitioned-for employees and must therefore be included in the directed unit.

Based on the following facts and analysis, I find that the employees which the Employer would include in the bargaining unit do not share a community of interests with the petitioned-for employees to a degree which would render the Petitioner's proposed unit inappropriate. Accordingly, I will direct an election in the Petitioner's sought-after unit.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴
3. The labor organization involved claims to represent certain employees of the Employer.⁵
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.
5. The appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as follows:

³ A brief filed by the Employer has been considered. Petitioner did not file a brief.

⁴ The Employer is a Delaware corporation engaged in data maintenance and retention at its Moonachie, New Jersey facility, the only facility involved herein.

⁵ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

All full-time and regular part-time transportation service specialists/couriers employed by the Employer at its Moonachie, New Jersey facility, excluding all office clerical employees, operations service specialists, operations services coordinators, customer service employees, administrators, managerial employees, professional employees, guards and supervisors as defined by the Act, and all other employees.

II. FACTS

1. The Employer's Operations

The Employer provides electronic data maintenance and retention for customers, which the Employer refers to as "clients," at its Moonachie, New Jersey facility. The Employer thus provides its clients with electronic data back-up and continuity as well as reassurance that the clients' data will survive physical or system failures and adverse events. Clients' data is stored in various forms of media: tapes, DVDs, CDs and CD-ROMs. The Employer picks up data from its clients, stores the most recent data available in its facility and then returns the media on a regular basis, retrieving updated data and beginning the process anew. Depending on the client's needs, the Employer picks up and delivers data and media daily, every few days, weekly or at longer intervals. The media is stored in the Employer's 54,000 square foot secure, climate- controlled, fire-retardant facility, which it calls a vault or library. The media is stored grouped in containers or individually on racks arranged much like a library would be: off a center aisle with containerized media on one side and individually "slotted" media on the other. To transport its clients' data the Employer uses a fleet of some 35 vans, which are also secure and climate controlled.

For organizational purposes the Employer has divided itself into an operations department and a transportation department which have their own employees, supervisors and management, up to the vice president level. At issue in the instant matter is whether the Employer's operation is so functionally integrated and the employees in these departments share such a community of interest as to necessitate placing all employees in the same bargaining unit.

2. The Employer's Employees

a. Transportation Service Specialists

The Employer's transportation department is responsible for the pick up and delivery of its clients' data. At the Employer's Moonachie facility, it employs TSSs to pick up the most recently updated media, and return the out of date media to the clients for updating. All couriers are required to have valid drivers' licenses and must have good driving records. Couriers have routes to specific clients, whom they visit regularly. Five of the 36 couriers, called "criticals," are utilized only for emergency pick up and deliveries or to fill in for other couriers. Couriers start and end each work day at the Moonachie facility. At the start of each shift, couriers pick up scanners, go to carts marked for their routes in a staging area near the loading docks, and scan the containers which the Operations Service Specialists, herein OSSs, have left for them from the previous day. The carts are loaded before couriers come to work, but couriers load last minute additions to their routes and may either pick additional media themselves or consult with an OSS when there is a discrepancy between what is on their cart and what the computer systems indicates should be loaded into the van. Once the courier's scanner indicates the appropriate media is on the cart, the TSS loads the van sequentially by order of deliveries and pick-ups, completes a pre-trip inspection of the vehicle and leaves the facility to begin the route. The optimal time for a courier to spend at the Moonachie facility from clocking in to loading his/her van and leaving the facility is 10 to 15 minutes, although the time for preparation for the route can double if there are sufficient discrepancies.

At the client's facility, TSSs interact with the client's authorized agent and, after verification through the use of the Employer's scanning device, physically exchange media. On occasion a TSS may even perform a tape transaction at the client's facility, backing up the media on-site. TSSs scan the incoming media at clients' facilities, load it into vans and continue along assigned routes. If a TSS encounters a problem while on route, the procedure is for the TSS to contact a Transportation Supervisor. Upon return to the Moonachie facility,

the TSS unloads the incoming media onto a cart, scans the media one more time and uploads the scanner into the Employer's computer system. The TSS then parks the van and returns his or her keys and fuel card to a Transportation Services Coordinator. As with the beginning of their day, couriers spend approximately 10 or 15 minutes at the vault before leaving for the day.

The 36 couriers are scheduled to ensure coverage throughout the day and week. The primary group of couriers start week days in staggered, eight-hour shifts from 7:30 through 11:00 a.m. The five "critical routes" are staggered throughout the day and run through the night. Sufficient couriers are scheduled so their 40-hour work week provides reduced coverage on weekends as well.

b. Operations Service Specialists

The Employer employs 32 OSSs to pick and gather the media that is ordered by the clients through the Employer's computer system. A pick list is generated for OSSs, showing the location and identifying the media they are to pick. They scan the media utilizing the same type of scanning equipment used by couriers. OSSs then load the media onto carts and leave the carts in assigned areas for TSSs so they can load the media into their vans the next day. OSSs are assigned to work by route; much like couriers who drive, deliver and pick up from their routes. All OSSs' work takes place in the vault or, on occasion, during what is called a library move, off-site as described below.

Upon the return of the vans to the Moonachie facility at the end of the day, an OSS will scan the incoming media then return the media to its proper location in the vault.

OSSs are divided into approximately 15 outbound specialists, who begin work at 8:00 a.m. and who pick, scan and verify media for the next day; and 15 OSSs who start at 5:00 p.m. and are responsible for inbound processing. Two or three OSSs work from 12:00 a.m. to 8:00 a.m.

c. Customer Service Representatives

The Employer's four customer service representatives work in the Employer's office area taking calls from clients when there is a change from a regularly scheduled delivery or pick-up or some other special request. The customer service representative communicates those requests to the transportation department and in some cases, directly to a TSS through cell phones with two-way radios. The TSS also occasionally communicates with the customer service representative when the TSS has encountered some problem which will affect the clients.

d. Administrators

The two administrator service specialists also work in the office area. There is no contention that these employees perform anything other than routine office clerical work.

e. Transportation Service Coordinators

The three transportation service coordinators are scheduled to cover each of the Employer's three shifts daily. They function to get the couriers moving in the morning, solve discrepancies in media to be delivered, communicate between their departments and management and provide back up for delivery routes if there is a personnel shortfall. The record is silent as to how often, or if, transportation service coordinators actually drive, since one of the responsibilities of the critical couriers is to perform back up driving. Transportation service coordinators are also responsible for the maintenance and repair of the Employer's vehicles. They do not hire, fire, promote or resolve employee grievances. If transportation service coordinators observe inappropriate conduct, their responsibility is to report it to supervision. According to the Employer's witness, transportation service coordinators' responsibility is to make sure that priorities are taken care of and that media and routes are where they are supposed to be.

Transportation service coordinators have different and more heightened responsibilities when compared to other classifications regarding the Employer's safety and security policies. The record shows that transportation service coordinators, like supervisors,

are charged with reporting safety and security concerns to management, communicating the Employer's safety and security policies to employees, enforcing work procedures and rules and providing job training.⁶

f. Operations Service Coordinators

Five operations service coordinators direct the employees within the vault, adjusting personnel and resources as situations dictate. They are responsible for ensuring the computers function appropriately and that adequate supplies are kept. The operations service coordinators also solve discrepancies and guide the workforce; assigning priorities and resource needs in the vault throughout the day. They do not hire, fire, promote, evaluate employees or resolve grievances.

3. Supervision

Transportation and operations department employees are separately supervised with a link only at the vice presidential level. TSSs at the Employer's facility are directly supervised by the three Transportation Supervisors. Above the supervisors in the Employer's hierarchy is the Transportation Manager, the Transportation Manager of Service Delivery, the Vice President of Transportation and finally the Vice President of Operations.

The OSSs are supervised directly by the three Operations Supervisors and then two Operations Managers. Above the Operations Managers in the hierarchy are the Manager of Service Delivery, the General Manager and finally the Vice President of Operations.

The customer service specialists are supervised by the Operations Supervisors. The Employer's two administrator service specialists are supervised by an Administrative Service Supervisor who reports to an Administrative Manager, who covers multiple facilities in New Jersey.

4. Events Outside Normal Daily Operations

The record reveals that the Employer engages in what it calls "library moves:" moving the client's media from one location to another; for example from one data center to

⁶ I do not decide the issue as to whether such duties indicate supervisory status as I have determined that in view of my findings as to the appropriate unit here this matter is rendered moot, as described below.

another or from one of the Employer's facilities to another. The Employer has a project manager and supervisor dedicated to this portion of its operations, but hourly employees volunteer for these assignments, which often occur during off hours. During these operations if a TSS is involved, aside from regular driving duties, the TSS might assist the OSS in unloading, unpacking, scanning and racking. While library moves may be 8 to 12 hours in duration and occur with some regularity, only half of the Employer's 36 TSSs have ever taken part in one.

From time to time the Employer will perform what it refers to as a "disaster recovery test," where a client will ascertain its ability to reconstitute its business after a simulated data disaster. In these exercises the Employer transports the client's media from the vault to another location where the client attempts to recover from the emergency scenario. As with the library moves, the Employer solicits volunteers to work these tests. Couriers work the disaster recovery tests; driving the vans and assisting with any other work that needs to be done. As with library moves, only half of the Employer's 36 couriers have ever been involved in a disaster recovery test.

Another portion of the Employer's business which is somewhat apart from the normal daily operations is the intentional destruction of media. For this service, OSSs retrieve media for destruction from the vault and it is transported to a separate shredding plant by the couriers. The record reveals that on occasions, when there is very high volume of media slated for destruction, TSSs assist in scanning and pulling media from the vault. Once again, participation in a destruction project is voluntary and only half of the Employer's couriers have ever taken part in this work.

The Employer's clients can also come to its facility to perform an audit, to verify that its data is being retained. The Employer's employees bring the client's media to a secure area of the vault to accommodate the audit. Participation by the Employer's employees is strictly voluntary. While TSSs may participate in these projects, only 10 or 20% actually have participated.

The Employer contends that its voluntary on call program, providing coverage in emergency situations outside of normal business hours, which is open to all operations and transportation department employees, supports its proposed unit. But employees who participate in this program must be trained and qualified to drive: no employee other than a TSS meets those criteria nor have any other employees volunteered.

5. Other Community of Interest Factors

The record indicates that couriers are the only individuals who spend the vast majority of their time out in the field making pick-ups and deliveries from clients, either driving in their vans or at the clients' locations, interacting with the Employer's clients face-to-face. While customer service employees speak with clients, they do so at a desk, over the phone from an office. OSSs have some telephonic client contact, but they spend the bulk of their time in the vault, picking media, scanning items they have picked into the computer system and placing the media they have picked onto carts for couriers to transport. While the record indicated evidence of some interaction between drivers and the other employees; I find such contact to be minimal. In this regard, contact with customer service employees in the event of delivery problems which might impact timely arrivals at a client's facility and contact with OSSs in the event of discrepancies with the list of data to be delivered and what the TSS actually has on his/her cart, appears to be minimal and demonstrates virtually no overlap among their duties. The record is clear that only TSSs drive the Employer's vehicles and spend the vast majority of their time outside of the facility. While couriers are involved with library moves and disaster drills, including helping OSSs pick the media, only TSSs drive the vans, and these events happen only a few times per month and approximately half of the 36 couriers have ever taken part in such events.

The record contained evidence of one transfer within classifications at the Moonachie facility.⁷ However, I find that one transfer in comparison to the number of employees in the

⁷ Although the record reveals that an OSS employee permanently transferred to a TSS position, there is no evidence regarding the circumstances of that transfer or when it occurred. The record also contained evidence of an additional transfer from one classification to another which appeared to have been a promotion to a supervisory position.

operations and transportation departments is not significant. The record was silent as to whether the transfer was undertaken at the request of the transferring employee or was a mandatory transfer.

All employees use the Employer's computer system, referred to as OPIS. OPIS is an all encompassing computer system; covering everything from billing to serving as labor-management tool and keeping track of employees' breaks.

All employees are under the same benefit program, incentive compensation programs, are covered by the same employee handbook, share the same lunch room and go through new employee orientation. While all employees are subject to the same general safety and security discipline policy manual, only couriers must pass an annual Motor Vehicle Department driving review. The safety and security discipline policy indicates that all collisions involving a courier are subject to discipline, even those committed off the job. While all of a courier's driving offenses are subject to discipline, on the job offenses receive heightened scrutiny. Additionally, the Employer does not guarantee employment in another job function should a TSS commit an infraction making him or her ineligible to drive. None of the other job classifications are subject to such action. TSSs also go through the Employer's driver qualification program which includes a reference check going back seven years and an on-the-road test. Only TSSs go through an Employer's driver training program and training given by third parties on topics such as safety and winter driving.

OSSs, TSSs and coordinators wear uniforms; administrative and customer service employees do not. The Employer has regular, separate meetings for employees in the operations and transportation department. The Employer also holds regular monthly meetings for all employees.

III. ANALYSIS

1. TSSs As An Appropriate Unit.

In making a determination as to whether a petitioned for unit is appropriate, the Board has held that Section 9(a) of the Act only requires that the unit sought by the petitioning union be *an appropriate unit* for purposes of collective bargaining. *National Cash Register Co.*, 166 NLRB 173, 174 (1966). Nothing in the statute requires that the unit be the only appropriate unit or the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950).

Although the unit sought by a petitioning labor organization is a relevant consideration in determining the scope of a bargaining unit, a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to the unit requested does not exist. *Overnite Transportation Company*, 322 NLRB 723 (1996); *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). Although an employer may seek a broader unit and that unit may be appropriate, it does not necessarily render the petitioner's unit inappropriate. *Overnite Transportation Co.*, above.

The Board has rejected application of any fixed rule for the unit placement of drivers and has applied a case-by-case analysis in this area. *E.H. Koester Bakery Co., Inc.*, 136 NLRB 1006 (1962). In so holding, the Board has recognized that the complexity of modern industry generally precludes the application of fixed rules, and that drivers, specifically, often possess a dual community of interest with certain factors supporting exclusion and some factors supporting inclusion in a broader unit. When considering the unit placement of drivers the Petitioner's desire as to the unit is always a relevant consideration and it is not essential that a unit be the most appropriate unit. See *Marks Oxygen Co.*, 147 NLRB 228

(1964); *Mc-Mor-Han Trucking Co.*, 166 NLRB 700 (1967); *Peacemaker Mobile Homes, a Division of Lonergan Corp*, 194 NLRB 742 (1971); *Overnite Transportation Co.*, 331 NLRB 662 (2000); *Home Depot USA, Inc.*, 331 NLRB 1289 (2000). The "sole issue to be determined is whether or not the unit requested by the Petitioner is an appropriate unit." *Peacemaker Mobile Homes, a Division of Lonergan Corp*, 194 NLRB 742 (1971).

Clearly, this is a case in which the petitioned-for employees share certain interests with employees the Petitioner seeks to exclude, and the unit sought by the Employer is arguably appropriate.⁸ However, the Board has found that drivers may constitute an appropriate unit apart from other employees unless they are so integrated with a larger unit that they have lost their separate identity.⁹ For the reasons discussed below, I find that the petitioned-for employees have maintained a separate identity and comprise an appropriate unit.

The propriety of the petitioned-for unit of drivers herein is determined by whether they share a community of interest. In determining the existence of community of interest, the Board weighs the following factors:

[T]he existence of substantial differences in interests and working conditions includ[ing]: a difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training, and skills; differences in job functions and amount of working time spent away from the employment or plant situs under State and Federal regulations; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees

⁸ In that regard, petitioned-for employees share common benefits and an employee handbook with employees the Employer would include in the bargaining unit.

⁹ Generally, unit determinations involving drivers depend upon the following factors: (a) Whether the drivers and plant employees have related or diverse duties, the mode of compensation, hours, supervision, and other conditions of employment; and (b) Whether they are engaged in the same or related production processes or operations, or spend a substantial portion of their time in such production or adjunct activities. *E.H. Koester Bakery Co. Inc.*, above.

or interchange with them; and the history of bargaining. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

Applying the foregoing analysis, I note that the couriers' start times are different from the other employees: the majority of couriers begin work at staggered times from 7:30 a.m. to 11:00 a.m. In contrast, 15 of the OSSs start at 8:00 a.m. and 15 others start at 5:00 p.m.¹⁰

The couriers' job functions, training and skills are dissimilar from the other employees. The Employer requires additional safety training, additional driving training and holds TSSs to higher safety standards through its disciplinary procedures, including discipline for off-the-job driving violations, than it does for its other employees. Couriers spend a majority of their time away from the facility, while the reverse is true for the other employees. While there is some functional integration between the duties of TSSs and OSSs, they do not have sustained or significant contacts with each other in the course of performing their work.

In *Mc-Mor-Han Trucking Co., Inc.*, above, the Board held that a separate unit of drivers was appropriate and rejected the Employer's contention that mechanics should be included. In *Mc-Mor-Han*, the Board emphasized in its conclusion that the functions of the drivers and mechanics were distinct, the fact that drivers spent a majority of their time away from the terminal and had only limited work contacts with the mechanics, there was no interchange, and there were substantial differences in wages and hours. Although the *Mc-Mor-Han* employees received the same benefits and were commonly supervised, the Board considered these factors "not so significant as to require the inclusion of all employees in a single unit." *Id.* at 701. Accordingly, I find that the facts of the instant case do not reveal such a community of interest or degree of integration between couriers and the other

¹⁰ I further note that the record was silent as to wage rates of the different classifications of employees.

classifications as to render the requested courier unit inappropriate. *Mc-Mor-Han Trucking Co., Inc.*, above; see also, *Flav-O-Rich, Inc.*, 234 NLRB 1011 (1978); *Walker-Roemer Dairies, Inc.*, 186 NLRB 430 (1970); *Diamond Standard Fuel Corp.*, 179 NLRB 702 (1969).

The record does not reveal that TSSs and the employees which the Employer would include in the bargaining unit share significant interaction on a day-to-day basis. In this connection, in the brief period of time that TSSs spend in the vault depending on the number of discrepancies they find, TSSs may interact briefly with OSSs or they may just retrieve missing media on their own. The record reveals insignificant interaction between TSSs and Operation Services Coordinators and virtually none between TSSs and customer service representatives or administrators.

TSSs do not spend sufficient time in the facility to have substantial interaction with the three transportation services coordinators, who are charged with such varied duties as maintaining the Employer's vehicle fleet and serving as liaisons between management and the transportation department. When TSSs encounter problems while on the road, they contact a Transportation Supervisor, not a transportation services coordinator or, if their schedule and other clients will be affected, a customer service representative. Without specific evidence that the transportation services coordinators drive delivery routes on a significant and regular basis, I cannot conclude that the classification is "dual function" and must be included in the unit. See *Mc-Mor-Han Trucking Co.*, above (dual function employees shall only be eligible to vote if they regularly perform duties of unit employees for a significant amount of time). Further, I conclude that the classification of Transportation Services Coordinator does not otherwise share such a strong community of interests, by virtue of its contact, interaction or common terms and conditions of employment, with the

petitioned-for unit such that it must be included therein. See *D & T Limousine Service, Inc.*, 328 NLRB 769 (1999); *The Salvation Army, Inc.*, 225 NLRB 406 (1976); *St. John's Associates, Inc.*, 166 NLRB 287 (1967).

In addition to their limited interaction, the evidence revealed no significant transfers among petitioned-for employees and the other employees that the Employer would include in the unit. The Employer produced evidence only of one employee transfer. Transfer of employees in such limited numbers is not sufficient to support the Employer's position regarding the make up of the unit. *New Britain Transportation*, 330 NLRB 397 (1999) (200 instances of temporary interchange do not approach the degree of significant interchange where Employer employs over 190 employees). Compare *Purolator Courier Corp.*, 265 NLRB 659, 661 (1982) (interchange factor met where 50 percent of the work force came within the jurisdiction of other facilities on a daily basis); *Dayton Transport Corp.* 270 NLRB 1114 (1984) (presumption rebutted where there were approximately 400-425 temporary employee interchanges between facilities in one year among a workforce of 87). Nor have there been temporary transfers between classifications. *Sumo Container Station*, 317 NLRB 383 (1995).

The Employer also contends that evidence of bargaining history on a broader basis compels a finding that the sought after employees are an inappropriate unit. In this regard, I have taken administrative notice that in Case 22-RC-12422 another labor organization, not the Petitioner here, was certified on January 30, 2004, as the collective bargaining agent in the broader unit, advanced by the Employer here. This certification arose from an election conducted in the broader unit pursuant to a Stipulated Election Agreement, not a litigated case. Thereafter on December 14, 2006 that labor organization was decertified pursuant to

an election conducted in Case 22-RD-1460. It appears that no collective bargaining agreement was ever entered into by the Employer and that labor organization. The Board has held that it is not bound to a unit description derived by stipulation of the parties especially in circumstances, as here, where the collective bargaining history is relatively short and no collective bargaining agreement was entered into covering the broader unit of employees. *Lab Corp. of America Holdings*, 341 NLRB No. 140 (2004), *Mid-West Abrasive Co.*, 145 NLRB 1665 (1964).

The petitioned-for employees also report to separate supervision further demonstrating that they share a community of interests separate and apart from other employees. Thus, although other employees share certain interests with the petitioned-for unit such as common benefits and an employee handbook, I do not find their common interests so significant and interrelated as to extinguish the separate identity of the petitioned-for unit of couriers. See *Novato Disposal Services, Inc.*, 330 NLRB 632 (2000) (mechanics excluded from unit of drivers); *Mc-Mor-Han Trucking Co.*, above (mechanics excluded from unit of drivers); *Home Depot USA*, 331 NLRB 1289 (2000) (driver unit distinct from broader unit of employees).

Here, the Employer urges that a wall-to-wall unit is appropriate in part because its employees handle the same client media, use some of the same equipment, and perform some common functions on an as needed basis, i.e., couriers retrieving media from the vault when there is a discrepancy or during emergency tests. However, unlike OSSs, customer service employees, administrators and coordinators, couriers are on the road, away from the Employer's premises, for their entire work day and work very different hours. While each may perform some functions similar to that of the other, they are not asked to substitute for

each other on a regular basis and there is no significant evidence of transfers among those positions. *Washington Palm, Inc.*, 314 NLRB 1122 (1994).

In making this finding I reject the Employer's argument that because its employees are all involved with the protection and retention of its clients' data, share some terms and conditions of employment and have some work-related contact, a functional integration between them exists which makes a unit limited to couriers inappropriate. Rather, I find that these factors are substantially outweighed by the factors supporting a conclusion that TSSs constitute a distinct group with a distinct community of interest and constitute an appropriate unit as described above. *Home Depot USA, Inc.*, above.

2. Cases Relied Upon by the Employer are Readily Distinguishable.

The cases relied upon by the Employer to argue for inclusion of all operations, transportation, customer service and administrative department employees in the unit with drivers are readily distinguishable from the facts of the instant matter.¹¹

I have considered cases relied on by the Employer in seeking to establish a broader unit and find them inapposite to the instant matter. *Birdsall Inc.*, 268 NLRB 186 (1983) relies heavily on the regular interchange of employees. In that instance, there was an employer-wide job bidding system that fostered the movement of employees from one position to another. For the reasons noted above, there is no evidence here of interchange or significant transfers among couriers and other classifications. In *Birdsal*, the employees all went through an extensive orientation that familiarized employees with all aspects of the Employer's operations. In the instant matter, couriers receive exclusive training targeted only to their classification.

¹¹ As I have found a unit of TSSs appropriate, the Employer's argument that excluding the Administrators would constitute a 2 person residual unit is moot.

The Employer also puts misplaced reliance on *United Rentals, Inc.*, 341 NLRB 540 (2004). In *United Rentals* the Petitioner sought a unit of drivers, mechanics and yard employees excluding counter employees, a parts associate and a branch associate. In finding in favor of a broader unit, the Board observed that employees performed the duties of different classifications every day; including non-drivers driving the Employer's vehicles. There is no evidence in the case at hand that any other classification drives the Employer's vehicles nor that employees performed duties across classifications on a daily basis.

Nor can the Employer rely on *Healthco Medical Supplies*, 233 NLRB 835 (1977) or *Avon Products, Inc.*, 250 NLRB 1479 (1980) to establish a community of interest between the couriers and employees in other classifications. Those cases involved highly integrated enterprises that required employees to work together, unlike the instant case where each group of employees can and do perform his or her job functions at different times. In *Avon Products* there were numerous permanent transfers with employees readily moving from one classification to another, a factor lacking in the case at hand. *Healthco Medical Supplies*, is also inapposite to the instant case as there coordinators were found to be plant clericals rather than supervisors and included in the unit. In the instant matter I have made no finding as to the coordinators' supervisory status, as I have excluded them based on a community of interest analysis.

The Employer's reliance on *Abdow Corp.*, 271 NLRB 1269 (1984) is also misplaced. *Abdow* involved a much smaller enterprise, consisting of 24 employees, in which the Petitioner sought to carve out a unit of 10 drivers, dockworkers and shipping/receiving employees, excluding kitchen and bakery employees. In finding a broader unit appropriate, the Board relied on the size of the employee complement located in a single small building,

which demanded greater employee contact. Additionally, all the employees in *Abdow* performed receiving functions. In the instant matter even when couriers are in the vault, they can be on opposite sides of a 54,000 square foot facility from other employees. Further, the record contains no evidence that employees perform any identical functions.

The Employer's reliance on *Atchison Lumber and Logging Co.*, 215 NLRB 572 (1974), also fails. In *Atchison*, unlike here, drivers were offered jobs in other classifications when they were unable to drive for long periods due to weather and other factors. Additionally, most of the drivers in that case had occupied other job classifications for the Employer at some time and some of the members of other classifications had previously been drivers. In the instant matter there is no such evidence. The record demonstrates only one instance of transfer between classifications.

In the instant matter, as I noted above, the unit sought is composed of employees who perform a separate function and possess special skills and qualifications not possessed by the Employer's other employees. They also primarily perform work away from the facility and have minimal work related contact with administrators, customer service representatives and OSSs, nor is there evidence of any significant interchange with them. Accordingly, I find that the unit sought by the Petitioner constitutes a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act. *Mc-Mor-Han Trucking Co.*, above; *Overnite Transportation Co.*, 325 NLRB 612 (1998).

IV. **CONCLUSIONS**

I conclude, based on the record as a whole, that the lack of employee interchange, the limited contact between employees throughout the Employer's facility, the different training and skills as well as the presence of separate departmental supervision outweigh the

centralization of functions such that I cannot find that there is functional integration so substantial so as require a unit including all of the Employer's employees. In these circumstances, the considerable lack of community of interest militates against a finding that only a facility-wide unit is appropriate. Based upon all of the above, I find the petitioned-for unit comprised only of couriers appropriate and shall direct an election therein.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be

represented for collective bargaining purposes by **Local Union No. 560, International Brotherhood of Teamsters.**

VI. LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **July 21, 2008**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for

which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

VII. RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by July 28, 2008.

Signed at Newark, New Jersey this 14th day of July, 2008.

/s/ J. Michael Lightner

J. Michael Lightner, Regional Director
NLRB Region 22
20 Washington Place
Fifth Floor
Newark, New Jersey 07102